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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/727,823

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Brian J. Brozell

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7485

76254

7590

05/27/2009

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EXAMINER

SMALLEY, JAMES N

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/727,823	Applicant(s) BROZELL ET AL.	
	Examiner JAMES N. SMALLEY	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26,28-35,40-42,48,51 and 53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 51 is/are allowed.
- 6) ☒ Claim(s) 26,28-35,40-42,48 and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/11/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 16, 2008 has been entered.

Claim Rejections – 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al. US 4,375,858 in view of Akers US 5,449,078 and in view of Summers GB 2,108,095.

Shah '858, in the embodiment of figures 7-8, teaches a container neck with a finish including a thread and a locking lug, and a closure having a thread, a locking lug, and an annular resilient spring element (10). The locking lug has a horizontal portion inbetween stop (20) and lug (15). Furthermore, the locking lug (14, 15, 20) is disposed on a step (13) which is radially outward of the neck finish on which the threads are disposed.

The reference teaches all the limitations substantially as claimed but fails to teach the closure locking lug having a sloping axially-oriented cam face.

Akers '078 teaches a child safety cap including corresponding locking lugs including a closure locking lug which has a sloping axially-oriented cam face, which engages a container locking lug in order to engage and close the container.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure locking lug of Shah '858, providing a sloping axially-oriented face to match the slope of the container locking lug, as taught to be known by Akers '078, motivated by the benefit of providing a smoother engagement between these sliding parts.

Shah '858 further does not teach the container lugs disposed on a stepped outer surface.

Summers '095 teaches container ratchet teeth disposed on a stepped neck surface located radially outwardly of a neck surface on which threads are disposed. Such is clearly arbitrary, as all that matters is that the container lugs are located at the proper radial distance from the closure lugs so that they interlock with each other. This could be accomplished by forming the container lugs with a sufficient radial thickness, or, making them radially shallow but attached to a stepped portion, as taught by Summers '095.

It would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to modify the container neck of Shah '858, forming the container neck lugs on a radially-outwardly stepped surface, such as that taught by Summers '095, motivated by the benefit of locating the lugs at the proper radial distance to interlock with the closure lugs.

4. Claims 28-34, 40-41, 48, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al. US 4,375,858 in view of Akers US 5,449,078 and in view of Summers GB 2,108,095, as applied above to claim 26, and further in view of Swartzbaugh et al. US 4,399,920.

Shah '858, as applied above teaches all the limitations substantially as claimed, but fails to teach the closure comprising two lugs, which cooperate to prevent rotation of the closure in the opening direction.

Swartzbaugh '920 teaches closure lugs (36, 37) and container lugs (25) which prevent removal of the closure from the container. Examiner notes the structure functions essentially the same as that of Shah '858 in that it prevents rotation of the cap in the removal direction. The difference between the two is that the additional lug is provided on the closure, and the stop lug (20) of Shah '858 is removed. A net material savings could be obtained if the closure lug is formed smaller than the stop lug.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Swartzbaugh '920, providing two separate lugs on the closure in place of one, and removing the stop portion (20) of Shah '858 in order to accommodate the function of preventing rotation of the closure in the removal direction, motivated by the benefit of reducing the amount of material used.

5. Claims 35 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al. US 4,375,858 in view of Akers US 5,449,078, in view of Summers GB 2,108,095, and in view of Swartzbaugh et al. US 4,399,920 as applied above to claim 30 and further in view of Puresevic et al. US 4,523,688.

Shah '858, as applied above teaches all the limitations substantially as claimed, but fails to teach the closure biasing element being circumferentially segmented.

Puresevic '688 teaches between an annular biasing element in the embodiment of figures 1-8 and a segmented biasing element in figures 9-12. Though pointed inwardly, one of ordinary skill would recognize the benefits in material savings could be applied to any annular biasing element.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the biasing element of Shah '858, forming it in segments as taught to be known by Puresevic '688, motivated by the benefit of reducing the volume of material needed in order to form the closure.

Allowable Subject Matter

6. Claim 51 is allowed.

Response to Arguments

7. Applicant's arguments with respect to claims 26, 28-35, 40-42, 48, and 53 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings

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of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner notes the references are all drawn to tamper evident closures, and one of ordinary skill in the art would have found a benefit of one useful on another, with a reasonable expectation of success.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES N. SMALLEY whose telephone number is (571)272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anthony D Stashick/
Supervisory Patent Examiner, Art Unit
3781

/James N Smalley/
Examiner, Art Unit 3781